UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/114
22 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 of the provisional agenda

CIVIL AND POLITICAL RIGHTS

Written statement submitted by the International Federation of Journalists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 March 1999]

GE.99-11604 (E)

Introduction

1. When a journalist is killed, the world reacts. It is an attack on the profession, on freedom of expression, on human rights. Outrage can be expressed by stable and emerging democracies alike. However, when journalists are imprisoned, in the name of the law, of justice, or national security, fewer voices are raised by the international community.

2. The range of laws used against the media is very wide, and varies from country to country and region to region. However, certain tendencies prevail and these can and should be examined and condemned by the international community and the United Nations Commission on Human Rights in particular.

3. In this submission the IFJ outlines general concerns in the misuse of defamation laws, denial of access to information, corrupt practices and contempt for the rule of law. These actions ensure that individual journalists may be silenced and they create an atmosphere of repression within the media community. These are practices which are widespread.

4. Genuine freedom of expression is essential, we believe, to the exercise of all other human rights. Unless the following points are taken seriously and acted upon, Governments will feel free to continue to silence their journalists and keep their people in ignorance.

Defamation

5. Contrary to the practice in many States, laws on defamation should not be designed to protect organizations, Governments or other groups. They should exist to protect the individual citizen. They should not be used, although they often are, to stifle criticism of the Government, or exposure of corrupt or illegal practices.

6. Investigative journalism ensures that Governments and private institutions are held accountable for their actions. It is essential in the fight against corruption and in monitoring the performance of the executive. Yet journalists are still sued for defamation even when they have conducted themselves in a responsible and justifiable manner.

7. International courts, including the European Court of Human Rights, have stated that public figures are required to tolerate a higher degree of criticism than private citizens, and yet many countries provide a greater level of protection to public figures, such as the president or prime minister, than to the average person.

8. In order to be defamatory a statement should be untrue, made with malicious intent and cause damage to the reputation of the person defamed. The original burden of proof should lie with the plaintiff and not the defendant. These are principles which ensure that individuals obtain protection and that investigative journalism is not impeded and that legitimate criticism is not stifled.

9. There is no place for defamation laws in the criminal justice system. The offence can be effectively dealt with under the civil code, and is more open to abuse when written into criminal procedure. It does not benefit democracy when journalists are imprisoned for defamation.

10. Where a country is intent on maintaining or creating democratic institutions, criminal defamation is a barrier to this development. It makes it easier for those in power to repress the media. It can be used by Governments to imprison journalists whilst maintaining a veneer of legal respectability.

11. The IFJ therefore:

(a) Asks the United Nations Commission on Human Rights to endorse the principle that defamation laws should only be contained in the civil code;

(b) Recommends that the United Nations Commission on Human Rights endorse the principle that in order to be defamatory a statement must be untrue, made with malicious intent and cause damage to the reputation of the individual concerned.

Access to information

12. Access to information is vital for the journalist to be able to exercise his/her profession. It is also essential for democracy to flourish. Governments can ensure that information is freely provided to journalists and citizens alike; however, problems persist in this field, either because there is no legislation guaranteeing access, or because there is an unwillingness on the part of the authorities to give access, or because of corruption.

13. Journalists from independent media often face problems in receiving information from public authorities who tend to favour the government press. In other instances, journalists are required to pay a public official in order to obtain information that should be freely available. This is not a case of fees for administrative charges, but corruption where public servants will not provide information unless they receive personal payment. These problems accumulate in countries where access to information and corruption are not seriously addressed by either the Government or the international community.

14. A more insidious consequence of the denial to provide access occurs in countries which use their defamation laws and criminal courts to imprison journalists. Governments state that journalists have been irresponsible and have broken the law, and for that reason they need to be punished. However, the same Governments that rail against journalists for biased reporting refuse to provide information, deny access to press briefings to members of the independent media and do not give interviews to independent journalists. Journalists who are trying to cover all sides of the story are prevented from doing so.

15. The IFJ recommends that the United Nations Commission on Human Rights call on all States to ensure that access to information is guaranteed in law and in practice and that penalties are imposed where such access is denied.

Respect for the rule of law and criminal procedure

16. In some countries, journalists may be detained in contravention of national laws which provide for safeguards against illegal detention or provision of bail. In Togo, journalists have been detained on remand beyond

the legal deadline and for longer periods than any possible sentence could impose and in Zimbabwe the refusal of military authorities to obey two High Court orders to release Mark Chavunduka is an obvious case of contempt for the rule of law. In Ethiopia, the Government claims that if journalists are detained beyond the legal limit, this is because the whole criminal justice system is in difficulty, but that the authorities are working to remedy this problem. However, a brief examination of the practice of the courts in relation to journalists suggests that the failing justice system argument is being used as a veil to hide the deliberate extension of detention of journalists.

17. It is clear, therefore, that whilst some countries have liberal and worthy laws on the statute books, the practice ensures that human rights continue to be abused. It is essential that the United Nations monitor not only the existence of good law but also its implementation. Healthy scepticism can only serve to defend human rights.

A special case: Nigeria

18. The IFJ has monitored the recent developments in Nigeria and is currently implementing a large project in that country. The initial signs from the Government since the death of General Abacha have been positive; however, the country is still in a period of change where democratic institutions and practice have not yet taken root.

19. The general information contained in this submission is applicable to various countries and legal systems, many of them more stable than Nigeria. However, Nigeria is in a pivotal position in West Africa, and its stability is essential to stability in the region. The mooted changes have not progressed sufficiently to justify a reduction in international vigilance at this time. A relaxation in the monitoring of Nigeria by the Commission would be very detrimental and would not serve the interests of the people of Nigeria or the international community.

20. The IFJ therefore recommends that the mandate of the Special Rapporteur on Nigeria be maintained.

Conclusion

21. Without a legal framework to guarantee freedom of expression, this fundamental right will always be abused. However, a legal framework in itself is not enough. Even with good laws, journalists can be repressed where the judiciary are not independent, courts are held in contempt, or corruption is rife.

22. In the year following the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, the international community must take action to guarantee the principles and rights that it lauded last year.